

Bryan J. Stoddard, #13590
bryan@tyshlaw.com
Steven C. Tycksen #3300
steve@tyshlaw.com
TYCKSEN & SHATTUCK, LLC
12401 S. 450 E., Ste. E-1
Draper, UT 84020
Phone: (801)748-4081
Fax: (801)748-4087

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

JAMES ARNETT,

Plaintiff,

v.

BENJAMIN SNOW HOWARD;
LIFELINE MEDIA LLC, a Texas
entity; NATIONWIDE AFFORDABLE
HOUSNG, a Texas corporation; and the
BEN HOWARD TRUST, and Idaho
trust,

Defendants.

**REPLY IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT
(Under Utah Law)**

Judge Ted Stewart

Case No.: 2:13-cv-00591-TS

ARGUMENT

Plaintiff's "Opposition" to Defendants' Motion to Dismiss fails to provide any proper or persuasive legal arguments as to why Plaintiff's First Amended Complaint should not be dismissed for failing to state a claim upon which relief can be granted.

First and most importantly, Plaintiff's Opposition demonstrates a fundamental misunderstanding of the legal standard for a Rule 12(b)(6) motion to dismiss. Plaintiff repeatedly attempts to divert the Court's attention from the legal sufficiency of the face of the allegations of his Complaint by pointing to "prima facie evidence" that he has speciously filed with the Court in various forms. He continues to ignore that the Court's only task in deciding a Rule 12(b)(6) motion is not to examine or weigh any evidence, but is to take the allegations as true and determine if those facts, if proven, would state a proper claim for relief under the established requirements for the causes of action claimed.¹

Plaintiff's other attempts to make counter arguments are either conclusory and unsupported by law or reason, or are simply irrelevant and occasionally inappropriate.

CONCLUSION

Based on the foregoing and on the prior briefing, the Court should dismiss Plaintiff's claims against all named Defendants for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

DATED and electronically signed this 5th day of September, 2013.

_____/s/ Bryan J. Stoddard_____
TYCKSEN & SHATTUCK
Attorney for Defendants

¹ [*See Miller v. Glanz*, 948 F.2d 1562, 1565 \(10th Cir. 1991\).](#)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT (Under Utah Law), was sent to the following persons
by the following means:

James Arnett 9288 N. Monmouth Court Tucson, AZ 85742	U.S. Mail
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On this 5th day of September, 2013.

/s/ Alicia Riggs